Supreme Court, U.S.
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No. 97-1055

In The

Supreme Court of the United States

October Term, 1997

FINOVA CAPITAL CORPORATION,
SUCCESSOR IN INTEREST TO
BELL ATLANTIC TRICON LEASING CORPORATION,

Petitioner,

v.

LIFECARE X-RAY, INC.; HELARION A. BERONILLA, JR.; NARCISA LIPANA; CHARLES CHANG; SAMUEL FLANNAGAN; YAHYA FADL; BARID B. JANA; PAUL DASCANI; GREGORY SPAIN; WILLIAM HUGHES; LIFECARE LABORATORIES, INC.; AND LIFECARE CARDIAC CENTER, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION

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28 pp

COUNTER-STATEMENT OF THE QUESTION PRESENTED

Did the Court below properly determine that it was bound by the requirements of Full Faith and Credit to accord validity to all the provisions of a properly registered sister state judgment, and did the Court below properly construe the requirements of that judgement?

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COUNTER-STATEMENT OF THE CASE

This case began as a breach of contract action in the Superior Court of the State of California for the County of Orange. Default was entered and after hearing judgments were entered. The California Judgments were registered in Pennsylvania in accordance with the Uniform Enforcement of Foreign Judgments Act of Pennsylvania. The Petitioner first requested that the California judgment be given Full Faith and Credit in the Petitioner's entry of Judgment. App. 32a. The Petitioner again raised Full Faith and Credit in Paragraph 9 of its Answer to Rule to Show Cause. App. 30a. The Pennsylvania lower Court found the judgments to be valid under Full Faith and Credit and denied the Respondents' request to open or strike the judgments. The Pennsylvania lower Court denied enforcement on the deficiency judgments holding "Plaintiff is hereby barred from seeking deficiency judgments in Pennsylvania under the Absolute Bar Rule [of Califonia]". The Pennsylvania lower Court found that the Petitioners had failed to abide by the notice requirements mandated by the express provisions of the originally transferred judgment, specifically, the requirements of California Commercial Code Section 9504, subsection 3. The Superior Court of Pennsylvania affirmed the Pennsylvania lower Court's decision and agreed that the Petitioners did in fact fail to comply with the aforesaid notice requirements. The Pennsylvania Supreme Court denied a Petition for Allowance of Appeal without an Opinion. The decision is in complete conformity with the Federal Full Faith and Credit statute, 28 U.S.C. §1738 and the Uniform Enforcement Of Foreign Judgments Act of Pennsylvania, and upholds the Order of the Superior Court of

the State of California for the County of Orange by requiring strict adherence to its provisions incorporating the strict notice requirements mandated by California Commercial Code §9504, subsection 3.

The question before this Court, properly framed, is whether the Pennsylvania Court properly determined that it was bound by the requirements of Full Faith and Credit to uphold the specific elements of the order originally entered by the Superior Court of the State of California for the County of Orange concerning strict compliance with the notice requirements of California Commercial Code §9504, subsection 3.

1. BACKGROUND

Commencing in 1988, the Petitioner, Bell Atlantic Tricon Leasing Corporation (BAT) [now Finova Capital Corporation], began to lease medical equipment to various doctors individually. By October of 1991 BAT had entered into six (6) separate and distinct leases between individuals and corporate lessees with individual guarantors. In 1992 all said leases went into default. The Petitioner's lease agreements, naming BAT, a California corporation, as a party, included jurisdictional and choice of law provisions selecting California, as opposed to Pennsylvania.

2. INITIAL FROCEEDINGS IN CALIFORNIA

BELL Atlantic Tricon Leasing Corporation, whose principal place of business was in the State of California, had instituted suit on June 25, 1992 in Orange County

California under the terms of the lease agreement. A Complaint for breach of all six (6) leases was filed at Case No. 691693 in the Superior Court of the State of California for the County of Orange. Service of the Complaint occurred during July or August of 1992. On January 26, 1993, a default judgment was entered against the Respondents for failure to respond to the Complaint. The subject judgment provided, in significant part, that certain items of equipment and personal property described in the complaint originally filed be delivered to the plaintiff. The judgment specifically provided that, upon delivery of possession, the plaintiff must sell or dispose of the personal property in a commercially reasonable manner as provided by California Commercial Code Section 9504.

3. THE PROCEEDINGS IN PENNSYLVANIA

a. Court of Common Pleas of Westmoreland County, Pennsylvania

On April 7, 1993, the California judgments were registered in Pennsylvania pursuant to the Uniform Enforcement of Foreign Judgments Act (UEFJA), 42 Pa.C.S. §4306. App. 30a-38a.

On April 8, 1993, the Petitioners' counsel sent correspondence that states in pertinent part, "These leases have been in default for a considerable period of time and I am advising you that Bell Atlantic Tricon will proceed with reclaiming the equipment on or shortly after May 10, 1993. If a well defined and documented plan is not in place by that time Bell Atlantic Tricon will have no other alternative but to proceed with the sale of the equipment

and enforcement of the judgment for any remaining balance that is due". In Mid-May 1993 the equipment for which the Respondents were guarantors was sold to a purchaser with whom counsel for certain of the Respondents had been negotiating. App. 64a.

In March of 1994, the Respondents (except for Lifecare Cardiac Center, Inc. and Lifecare Laboratories, Inc.) moved to open or strike the judgments, alleging, inter alia, that the Respondents were not properly subject to the jurisdiction of the California Court and, in the alternative, that the judgments were unenforceable due to the Petitioner's failure to notify the Respondents of the sale of the leased property. The lower Court of Pennsylvania properly reviewed the Petitions, Answer, Affidavits, Deposition and Oral Arguments rendering its opinion of March 26, 1996. In the Opinion of March 26, 1996 the Court denied the Respondents request to open or strike the judgment concluding that there was no support for the Respondents' contention that they were not properly subject to the jurisdiction of the California Courts. App. 13a-26a. The Court did conclude, however, that the Petitioners failed to comply with the Order of the Superior Court of the State of California for the County of Orange by failing to sell or dispose of the collateral in a commercially reasonable manner as provided by Commercial Code Section 9504. The Court further concluded that, under the terms of the Order:

> "by choosing to proceed with the sale of the leased equipment without notice the Plaintiff forfeited its right to seek a deficiency judgment against the Defendants under 9504." App. 23a.

The lower Court of Pennsylvania therefore entered an Order which states:

> "The Court having found the Plaintiff has failed to comply with the notice provision of §9504 of the California Commercial Code as required by the original California Order, dated January 26, 1993; Plaintiff is hereby barred from seeking deficiency judgments in Pennsylvania under the Absolute Bar Rule." App. 24a-25a.

b. The Pennsylvania Superior Court

On appeal, the Pennsylvania Superior Court affirmed the lower Court's Order barring the enforcement of the registered Pennsylvania judgment. The Superior Court held that "In the present case Appellant was expressly ordered to comply with §9504 which includes the notice provisions of §9504 (Section 3). This notice requirement is to be strictly construed and failure to comply with it will act as an Absolute Bar to a deficiency judgment under California law. This Rule of Law has not been changed in any manner by the 1991 Amendments to §9504. Thus, the deficiency judgments are not enforceable under California law." App. 11a. In so determining, the Superior Court cited the California case of *Atlas Thrift Co. v. Horan*, 27 Cal.App.3d 999, 104 Cal.Rptr. 315 (1972). App. 9a. The Superior Court rejected the Petitioner's argument that this rule had been changed by the 1991 Amendments to Section 9504, and noted that the California case of *Canadian Commercial Bank v. Ascher Findley Co.*, 229 Cal.App.3d 1139, 280 Cal.Rptr. 521, 526 (1991), relied on by the Petitioner, allowed the abandonment of the Absolute Bar Rule only in certain specific instances, but never in the

instance in which notice was required and not given. App. 10a.

Under the Full Faith and Credit principle the Superior Court of Pennsylvania could not enforce the deficiency judgment since they were not enforceable under California law. App. 11a. Furthermore, the Superior Court found it significant that the "Appellant attempted to amend the default judgment order to eliminate the §9504 notice requirements. The California Court refused to do so." App. 11a. The Superior Court noted of the Petitoner's argument that "the trial Court herein rejected this argument concluding that the Appellant elected to proceed under §9504 and is bound by that decision. We do not disagree with this logic. Since the deficiency judgments are not valid, we agree that the bond was properly denied. Orders affirmed". App. 12a.

C. The Pennsylvania Supreme Court

On April 24, 1997, the Petitioners filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania requesting consideration on three questions, framed by the Petitioners as follows: (1) The Superior Court's decision conflicts with this Court's ruling regarding Pennsylvania Courts opening and re-trying a final judgment of a competent Court that is before it by transfer via the Enforcement of Foreign Judgments Act; (2) The Superior Court's decision was not in accord with the decisions of other Superior Court decisions on the same question concerning the transferee Court's discretion and the doctrine of *res judicata*; (3) The Superior Court's decision below was not in accordance with other Superior Court

rulings below, entitling Full Faith and Credit to Foreign Judgment Laws and the Pennsylvania Courts lack of jurisdiction to re-litigate said judgments. On September 19, 1997, the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal without comment. The Supreme Court of Pennsylvania's allowed the Pennsylvania Superior Court decision to stand undisturbed.

4. SUBSEQUENT PROCEEDINGS IN CALIFORNIA

On October 27, 1995, Judge Brickner of the Superior Court of the State of California for the County of Orange amended the original Order of January 26, 1993 ex parte in reference to §9504 as it related to the leases entered into after January 1, 1991 to reflect their status as UCC §2A leases based on the Petitioner's representation that there was a clerical error made. On subsequent application by the Respondents by Order dated December 15, 1995, Judge Brickner voided the amendment as being more than a clerical error and indicated that the language of the judgment bestowed a right upon the defaulted defendants, the Respondent. App. 27a. The Court ruled "the nature and extent of this right is not for the Court to determine, suffice it to say that it is potentially of some value and cannot be taken from them under the banner of clerical error change."

On June 24, 1996, the Petitioner was granted a hearing before Judge Brickner on his four (4) Motions, *i.e.*: (1) confirming compliance; (2) confirming enforceability; (3) determining amount due and (4) clarifying status of parties. The holding of the Superior Court of the State of

California for the County of Orange in regard to these Motions is as follows:

"The four Motions of Plaintiff"; "confirming compliance"; "confirming enforceability"; "determining amount due"; and "clarifying status of parties" are all denied. They are without merit and call upon the Court to make findings which are both advisory and beyond its jurisdiction."

Furthermore, the Court determined that "concerning the issues of sanctions, while the Motions above are virtually unknown in the law, the moving party did have the closing remarks of Judge Scherer, which would clothe the moving party in, at least, a Good Faith Argument. Thus the Motion for Sanctions is denied." This was the final Order and determination of the Superior Court of the State of California for the County of Orange in regard to this action. App. 29a.

5. THE LIFECARE CARDIAC CENTER, INC. AND LIFECARE LABORATORIES, INC. JUDGMENTS

Lifecare Cardiac Center, Inc. and Lifecare Laboratories, Inc. did not Petition the lower court for relief. Although Lifecare Cardiac Center, Inc. and Lifecare Laboratories, Inc. did not Petition for relief from the lower court they were named Defendants in the action taken by Bell Atlantic Tricon. As named parties in the action the lower court's Order properly applies to Lifecare Cardiac Center, Inc. and Lifecare Laboratories, Inc. in the application of the Absolute Bar Rule to the judgments arrived at in the January 26, 1993 California Court Order. These parties too, were subject to the non-compliance by the

Petitioners under §9504 of the California Commercial Code and they are properly affected by the findings of the Pennsylvania lower Court. Footnote 1, App. 4a. The Superior Court of Pennsylvania properly denied a request for reconsideration to address this issue.

SUMMARY OF ARGUMENT

The Pennsylvania Court, as transferee of a properly registered foreign judgment from the State of California, completely honored the requirements of Full Faith and Credit in according the transferred judgment the same effect it would have been accorded in the rendering State of California.

The decisions of the Pennsylvania Courts were based upon the specific language of the transferred judgment, which was drafted by the Petitioner itself. This language did not affect a mere procedural matter involving execution on the judgment, but instead went to the very substance of whether in fact the transferred judgment itself provided for the recovery of the alleged deficiency by the Petitioner.

The Petitioner recognized that the subject language affected not merely procedural, but substantive matters, as evidence by the Petitioner's attempt to delete the troublesome language in its *ex parte* application to the California Court, in which the Petitioner represented falsely to that Court that the deletion of the subject language was merely in the nature of a clerical correction not affecting the substantive rights of the parties. The California Court expressly rejected this representation when

granting the Respondents' motion to vacate the *ex parte* order deleting this language, after being informed for the first time by the Respondents that the Pennsylvania Court had concluded that, under California law, the inclusion of this language rendered the alleged deficiency unenforceable if strict notice was not provided to the Respondents by the Petitioner.

The Pennsylvania Courts have properly analyzed the specific provisions of the transferred judgment and have properly applied the controlling law of the rendering State of California, and consequently have properly concluded that the specific terms of the transferred judgment bar enforcement of any alleged deficiency resulting from the sale of the repossessed goods. The decision of the state court is in complete conformity with prior decisions of this Court and, in fact, is mandated by those decisions. Moreover the underlying policy and purposes of Full Faith and Credit would be subverted by allowing the Petitioner to escape the mandates of the transferred judgment and to once again attempt to relitigate this settled issue in the Courts of California. In fact, Full Faith and Credit mandates that the proper decision of the Pennsylvania Court in the instant matter be accorded Full Faith and Credit by the Courts of California, such that the Petitioner is prohibited from returning to the State of California to once again attempt yet another bite of a rotten apple.

REASONS FOR DENYING THE PETITION

The Pennsylvania lower court consistent with the Full Faith and Credit provision of the U.S. Constitution and 28 U.S.C. §1738 did acknowledge the California judgments as being properly obtained in California, acknowledged proper registration in Pennsylvania and acknowledged that they were not subject to being open or struck. The Pennsylvania lower court also found that the law of its sister state, California, was not complied with while proceeding for deficiency judgment enforcement. In furtherance of the Full Faith and Credit provision of the U.S. Constitution and 28 U.S.C. §1738 the lower court of Pennsylvania found that failure to comply with the notice requirements of the California Commercial Code §9504 was an Absolute Bar to the satisfaction of the deficiency judgments inside the State of California and therefore applied to judgments registered in the State of Pennsylvania.

The Full Faith and Credit Clause and 28 U.S.C. §1738 in pertinent part directs the judiciary of individual states to pay respect to the judgments of foreign states. To accomplish the intent of the Full Faith and Credit Clause and 28 U.S.C. §1738 the individual states must also respect the law upon which each judgment is formulated and rendered. Under Pennsylvania's adoption of the Uniform Enforcement of Foreign Judgments Act at 42 Pa. §4306 "[the courts] shall treat the foreign judgment in the same manner as a judgment of a Court of Common Pleas of this Commonwealth." App. 45a. The treatment a judgment is rendered by a Court of Common Pleas of the Commonwealth of Pennsylvania is in reliance upon, not in defiance of, the statute upon which it is entered and

upon which it is to be enforced. In the instant case, California law was utilized in the establishment of the default judgments at issue. The Honorable David H. Brickner of the Superior Court of California of the County of Orange ordered "Plaintiff shall sell or dispose of the personal property in a commercially reasonable manner as provided by Commercial Code §9504 and the net proceeds of the sale or other disposition shall be applied to the unpaid balance due on the judgment entered." App. 38a. The Pennsylvania lower court, in application of the Full Faith and Credit clause and in compliance with 28 U.S.C. §1738, recognized the California judgment *in its entirety* and therefore refused to enforce the deficiency provisions of that judgment due to the Petitioner's noncompliance with California Commercial Code §9504, which, under California law, resulted in an Absolute Bar to that enforcement. The Pennsylvania Superior Court affirmed that the lower court of Pennsylvania complied with its Full Faith and Credit obligations under 28 U.S.C. §1738. The Pennsylvania Superior Court in upholding the California judgment and the California law upon which the judgment rests, has complied with the Full Faith and Credit principle. The Superior Court of Pennsylvania's findings set forth

> "Appellant was expressly ordered to comply with §9504 which included the notice provisions of §9504(3). This notice requirement is to be strictly construed and failure to comply with it will act as an Absolute Bar to a deficiency judgment under California law." App. 11a.
>
> "This rule of law has not been changed, in any manner, by the 1991 amendments to §9504.

Thus, the deficiency judgments are not enforceable under California law."

The Petitioner asserts that the Pennsylvania Courts have failed to comply with the Full Faith and Credit clause and 28 U.S.C. §1738 under this Court's interpretation of *Matsushita Elec. Indus. Co. v. Epstein*, 116 S. Ct. 873, 877 (1996). In that case, the U.S. Supreme Court explained (the statute) "Directs all courts to treat a state court judgment with the same respect that it would receive in the courts of the rendering state." *Matsushita Elec. Indus. Co. v. Epstein*, 116 S. Ct. 873, 877 (1996). The Respondents assert that both the Pennsylvania lower court and the Pennsylvania Superior Court have complied with that explanation of the Full Faith and Credit obligation. The Pennsylvania courts recognized the California law and its requirements and rendered the necessary respect as obligated. The Petitioners overlook the necessary review of the law upon which the judgment was rendered. The Superior Court of California of the County of Orange, by its inclusion, *at the Petitioner's request*, of the subject language in its judgment, expressly required that, in order to recover any deficiency resulting from the sale of the subject equipment, the Petitioners had to adhere to the requirements of California Commercial Code §9504. The Pennsylvania courts have upheld the interest and effort put into this matter by the California courts and respected, through compliance, the order of that court. The actions of the Pennsylvania courts uphold the interest that must be respected by the courts in other courts as a matter of federal constitutional law. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. at 430, 436-39 (1943); *Williams v. North Carolina*, 317 U.S. 287, 293-96 (1942); *Thomas v.*

Washington Gas Light Co., 448 U.S. 261, 293 (1986) (Rehnquist, J. dissenting). 28 U.S.C. §1738 sets forth:

> "Every court in the United States must give the judgment the same effect and recognition as it would receive from the court that rendered it."

The Pennsylvania courts have fulfilled the requirement of 28 U.S.C. §1738 in finding as the California courts would find. "[F]ailure to comply with the notice requirement precludes the secured party from recovering a deficiency judgment against the 'debtor'." *Earl Of Loveless, Inc. v. Gabele*, 2 Cal.App.4th 27, 2 Cal.Rptr. 2d 829 (1991). The Pennsylvania courts have fulfilled the legitimate interest of the parties and the objectives of Full Faith and Credit in seeing that "there be an end to litigation" through the application of the law of the rendering state, California, to the requirements of notice and the enforceability of the alleged deficiency. *Baldwin v. Iowa State Traveling Men's Assoc.*, 283 U.S. 522, 525 (1931).

The Respondents disagree with the Petitioner's assertion that the only issue remaining after the entry of the January 26, 1993 Court Order in California and its registration within Pennsylvania April 7, 1993 was payment. To the contrary, compliance with the court order set forth January 26, 1993 by the Superior Court of California of the County of Orange was necessary to gain enforcement of the deficiency judgments. As stated in the Restatement (second) of Conflict of Laws §92 Cmt.c (1971), "proceedings pending on the judgment in the rendering state do not affect the validity of the judgment for purposes of Full Faith and Credit in sister states". *Nanonstank of North Carolina v. Parsons*, 477 S.E. 2d 735, 739 (S.C. App. 1991). The validity of the California judgments for purposes of

Full Faith and Credit was never in question. The issue has always been, and continues to be, whether there was compliance with the requirements of California Commercial Code Section 9504. There is no issue of Full Faith and Credit since Pennsylvania recognized the default judgments rendered by the California courts. The validity given to the California judgment by the Pennsylvania Court is evidence by the lower court of Pennsylvania's refusal to open or strike the judgment registered in Pennsylvania. App. 24a-25a.

As the Superior Court of Pennsylvania has held in *Noble Well Service, Inc. v. Penn Energy,* 502 A.2d 200 (Pa.Super. 1985):

> "The validity of a foreign judgment is established in the transferor court, and may not be retried in the Pennsylvania courts, except for the limited purpose of determining whether the transferor court had jurisdiction to enter the judgment, and whether the judgment was obtained without derogating the judgment debtor's due process rights." *Id.* at 205, 206.

In the instant case, the Pennsylvania lower court found that the debtor's due process rights were being derogated since the notice requirements of the California Commercial Code §9504, in particular, Section 3, were not being complied with California law. In so finding, the lower Pennsylvania court determined that this non-compliance barred the Petitioner from seeking a deficiency judgment in Pennsylvania under the Absolute Bar Rule [of California]. App. 24a-25a. The Superior Court of Pennsylvania affirmed this ruling based upon California case law.

> "Failure to comply with either the notice requirement or the requirement of commercial reasonableness will act as an Absolute Bar to a deficiency judgment." *Crocker National Bank v. Emerald*, 221 Cal. App. 3d 852, 270 Cal. Rptr. 699 (1990).

The only issue before this Honorable Court is whether the Pennsylvania Court, after recognizing as valid the judgment of a sister state, is also bound by the strict requirements of that judgment as to enforcement thereof. These strict requirements went not merely to the execution of the judgment, but to whether in fact there ever was an enforceable judgment as to any alleged deficiency. No action to open or strike the registered judgment from California was ever taken by the Pennsylvania courts contrary to the Full Faith and Credit obligation. This instant case is more than a "mere procedural transfer of a final judgment to Pennsylvania", rather it is a commitment for which the Pennsylvania courts must act as if and on behalf of the California courts and its respective law. *Barns v. Buck*, 346 A.2d 778 (Pa. 1975). The principle of the Full Faith and Credit Clause and the meaning of 28 U.S.C. §1783 obligate the Pennsylvania courts to act in accordance with the laws of California pertaining to the California judgment, being a sister state, in recognition of the California court ruling. The Petitioner's failure to provide notice as set forth in California Commercial Code §9504 rendered the judgment valid but unenforceable as is necessary under Uniform Enforcement of Foreign Judgments Act. 42 Pa. C.S.A. §4306.

The California Court Order, providing that the judgment be enforced in compliance with the California Commercial Code §9504, empowered the Pennsylvania courts the same capacity as the California judiciary through interpretation and in view of its "local statutes and practice", specifically, 13 Pa. C.S.A. §9504.

> "When there has been a commercially reasonable disposition of collateral, the issue arises as to the affect that disposition upon an creditors entitlement to recovery of remaining debt. It is the view in certain jurisdictions that when a sale is found to have been commercially unreasonable, the creditor should be barred entirely from obtaining a deficiency judgment against the debtor." *Savoy v. Beneficial Consumer Discount Co.*, 468 A.2d 465, 503 Pa.74 (Pa.1983), *Western Decor and Furnishings Industries, Inc. v. Bank of America*, 91 Cal. App. 3d 293, 154 Cal.Rptr. 278 (1979), *Miles v. New Jersey Motors, Inc.*, 44 Ohio App. 2d 351, 338 N.E. 2d 704 (1975).

The Petitioner's failure to comply with the requirements of the California Commercial Code §9504 has rendered a commercially unreasonable disposition of collateral, the result being an Absolute Bar from obtaining a deficiency judgment. The Pennsylvania lower court "determined that it is obligated to give Full Faith and Credit to the California Order including the provisions of §9504." App. 18a. The lower court of Pennsylvania noted that the Petitioner "as scrivener of the proposed order signed by Judge Brickner, incorporated the reasonableness requirements of §9504 in the Order". App. 17a. The Respondents set forth that the Petitioner did know or

should have known the notice requirements of the California Commercial Code §9504 prior to registration of the judgment in Pennsylvania and thereafter for enforcement purposes.

The Pennsylvania Superior Court, by affirming the position of the Pennsylvania lower courts, upheld the principle of Full Faith and Credit as applicable to the default judgment registered in Pennsylvania from California.

> "Notice to the debtor is the mechanism that the legislature and the drafters of the Uniform Commercial Code choose to insure that sales of collateral are conducted in a commercially reasonable fashion. Notice serves its purpose by giving the debtor an opportunity to monitor the sale to insure its commercial reasonableness." *Backes v. Village Corner, Inc.*, 197 Cal. App. 3d 209, at 215, 242 Cal.Rptr. 716 at 722 (1987).
>
> "Commercial reasonableness is a statutory requirement for all sales of collateral (Cal. U.Com. Code §9504, subd. (3)); it is not a substitute for compliance with the mandatory notice provisions. The notice requirement is designed to insure commercial reasonableness by preventing secret or collusive sales of collateral. If retrospective arguments about commercial reasonableness could excuse a lack of notice, notice would become a thing of the past." 197 Cal. App. 3d 209, at 216-217, 242 Cal. Rptr. 716 at 723-724 (1987).

The Petitioner's "notice", sent on April 8, 1993, at no time indicated whether or not the sale of the collateral was to be public or private and it failed to meet the specific notice requirements of the California Code §9504

(3). Consequently, under its Full Faith and Credit obligation, the Pennsylvania judiciary found it necessary to recognize the Petitioner's failure to comply with the notice requirements and deny enforcement of the registered judgment from California. App. 20a-21a. The Petitioner, in failing to meet the minimum requirement of defining either public or private sale, is precluded from asserting the protection of private sale status, which requires only that "a private sale may simply recite the date 'on or after' which the collateral will be sold". *Backes v. Village Corner, Inc.*, 197 Cal. App. 3d 209, at 215, 242 Cal. Rptr. 716 at 722 (1987).

> "Notice to the debtor is the mechanism that the legislature and the drafters of the Uniform Commercial Code chose to insure that sales of collateral are conducted in a commercially reasonable fashion. Notice serves this purpose by giving the debtor an opportunity to monitor the sale to insure its commercial reasonableness. The right to a deficiency judgment is conditional and depends on strict compliance with the statutory requirements." As the court stated in *Atlas Thrift Company v. Horan*, 27 Cal. App. 3d 1999, 2003, 104 Cal.Rptr. 315, (1972). *Earl of Loveless, Inc. v. Gabele*, 2 Cal. App. 4th 27, 32-33, 2 Cal.Rptr. 2d 829, 834-835 (1991).
>
> "[T]he rule and requirement are simple. If the secured creditor wishes a deficiency judgment he must obey the law. If he does not obey the law he may not have his deficiency judgment". 2 Cal.App.4th 27, 33, 2 Cal.Rptr. 2d 829, 835 (1991), *Backes v. Village Corner, Inc.*, 197 Cal. App. 3d 215-216, 242 Cal.Rptr. 716, 724-725 (1987). "It is well established in California that failure to comply with the notice requirement

> precludes the secured party from recovering a deficiency judgment against the debtor." 2 Cal. App. 4th 27, 33, 2 Cal.Rptr. 2d 829, 835 (1991), *Connelly v. Bank of Sonoma County*, 184 Cal.App. 3d 1119, 1122, 229 Cal. Rptr. 396 (1986).

Clearly, the California law is serious in compelling compliance with its notice requirements. The Pennsylvania courts in placing scrutiny on the instant case and in furtherance of the Full Faith and Credit Clause and 28 U.S.C. §1738 correctly applied the Absolute Bar Rule of California and denied enforcement of the deficiency judgments.

The California judgment in whole and as set forth by the Honorable Judge Brickner's Order dated January 26, 1993 in the Superior Court of California of the County of Orange has been acknowledged by the Pennsylvania courts as valid and registered therein. Pennsylvania in upholding the Full Faith and Credit principles and the underlying unified judicial system mandated by Article 4 of the Constitution has ruled consistently with the laws of California, its sister state. Pennsylvania, in recognizing the notice requirements of the California Commercial Code §9504 and of the Order directing the Petitioner to comply with that section, is consistent with the Full Faith and Credit mandate of Article 4, Section 1 of the U.S. Constitution, 28 U.S.C. §1738 and Pennsylvania's adoption of the Uniform Enforcement Judgment Act 42 Pa. C.S.A. §4306. The Petitioner, as scrivener of the Order upon which the instant case has been relentlessly litigated, has subjected itself to strict compliance with California Commercial Code §9504 and as a result of its own actions must deal with the consequences. If anyone

sought to avoid the dictates of the original judgment, it was the Petitioner, not the Respondent, who sought selective enforcement of all but the one provision that it found most troublesome. Similarly, the Petitioner itself registered the judgment in Pennsylvania and relied upon that state's courts for the enforcement of the judgment according to that judgment's own terms. The Pennsylvania courts must be recognized to possess the ability to construe and apply the laws of the rendering state in effectuating the stated terms of the judgment. The courts of Pennsylvania must be given the latitude of reasonable interpretation and enforcement of foreign judgments registered within its Commonwealth. Failure to allow the individual States judiciaries the opportunity of interpretation and review within the scope of Article 4, Section 1, of the U.S. Constitution is contrary to the Full Faith and Credit principle the state courts are attempting to uphold.

The properly entered judgment of one state does not lose its legal efficacy upon transfer to a sister state. If that were so, the whole purpose of the Full Faith and Credit clause and statutory enactments would be vitiated. All the substantive provisions of the judgment as originally transferred retain their character upon transfer of the judgment. To allow otherwise would be to invite the evasion of judicial mandates of one jurisdiction by attempting to "filter" them through a sister state. All judgments must be enforced on their stated terms. The Petitioner simply cannot be permitted to seek enforcement of a judgment from a transferree court and then

refuse to allow the transferree court the right to determine what the judgment requires. The fact that the Petitioner apparently inadvertently failed to read the original judgment before attempting to comply with it does not give license to the transferree court to deliberately do likewise at the Petitioner's behest in order to relieve the Petitioner of the effects of its own oversight. The instant case presents no compelling reason justifying such a radical departure from sound jurisprudence.

CONCLUSION

The state court correctly determined that it was bound by the requirements of Full Faith and Credit to accord validity to all the substantive provisions of the properly registered sister state judgment, including the requirement that notice conforming to California Commercial Code Section 9504 be given the Respondents. The state court likewise properly concluded that the law of the rendering state precluded enforcement of any alleged deficiency due to the express terms of the transferred judgment. That court's decision is in complete conformity with the decisions of this Court and none of the considerations which would support a grant of review are present

in this case. Accordingly, Respondents respectfully request that the Petition for Certiorari be denied.

Respectfully submitted,

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